IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.909 OF 2007

Vikram Ispat ..Petitioner

Vs.

Union of India & Ors. ..Respondents

Mr. Milind Vasudeo with Mr. R. Ravindran for the Petitioner.
Mr. R.V. Desai, Senior Counsel with Ms. N.V. Masurka, Mrs.
H.P. Shah and Mr. H.P. Chaturvedi, for respondents.

CORAM : F.I. REBELLO &
R.S. MOHITE, JJ.
DATED : 29TH NOVEMBER, 2007

P.C.

. Rule. Heard forthwith.

2. The petitioner had approached this Court by way of a mandamus to direct the Respondents to forthwith repay the pre-deposited amount with interest thereon as contemplated in the Board's circular dated 8th December, 2004. By an interim order of 23rd August, 2007 we had directed the Respondent to deposit in this Court a sum of Rs.3.36 crores with interest at the rate of 12% per annum from the date of deposit and calculated till the date of deposit. Thereafter as the amount was not deposited we had extended the time to deposit by order dated 18th October, 2007. That amount has since been deposited along with interest.

3. During the pendency of the petition it is the contention of the respondents that they had taken out, Notice of Motion No.574 of 2007 and considering the judgment of the Supreme Court in the case of M/s.Ispat Industries Ltd. vs. Commissioner of Customs, Mumbai, 2006-TIOL-127-SC-CUS and the direction of the Supreme Court

which read as under:-

> "Any amount collected by the revenue as duty on barge charges shall be refunded forthwith to the assessee with statutory interest from the date of payment to the date of refund, which must be within three months from today."

The Petitioners are only entitled to statutory interest.

. The Appeal filed by the petitioners before the Supreme Court being Civil Appeal No.3972 of 2001 considering the judgment in Ispat Industries Ltd., was allowed.

. Learned Counsel draws our attention to the provisions of Section 27A of the Customs Act and points out that at the relevant time, considering the Circular, the interest payable was 8% p.a. and as such the petitioner is not entitled to interest at 12% p.a. It is, therefore, submitted that the petitioner should be allowed only to withdraw the principal amount along with the interest at 8%which has been deposited in this Court and the balance to be refunded to the Revenue.

4. On the other hand our attention has been invited to the Notification dated 2nd January, 2002 by the Central Board of Excise and Customs, New Delhi which has treated pre-deposit as distinct from duty. Our attention is next invited to the judgment of the Supreme Court in Commissioner of Central Excise, Hyderabad vs. L.T.C. Ltd., 2005 (179)

E.L.T. 15 (S.C.). In that case the Supreme Court considered the draft Circular of CBEC which provided for 12% interest in the matter of delay in refund of the amount of pre-deposit. The draft Circular was made a part of the order and the Appeal was disposed of accordingly. Interest, therefore, payable on pre-deposit is 12%. There is nothing before us to point out that the said Circular has been subsequently withdrawn by CBEC or for that matter any other Circular to the contrary has been issued, if in law they could do so.

5. In the instant case as what we are considering, is in the matter of pre-deposit, it would be the judgment of the Supreme Court in ITC Limited (supra) which accepted the draft circular which will cover the issue.

6. Considering the above, the contention of the respondents that the interest payable would be 8% cannot be accepted. In the light of that petition made absolute in terms of prayer clause (a). The petitioners are entitled to interest at the rate of 12% on the principal amount of pre-deposit as also the interest on the amount deposited in the Court, if the amount was invested. The amount to be paid to the Petitioners on the petitioners furnishing a certified copy of this order before the Prothonotary & Senior Master. In the circumstances of the case there shall be no order as to costs.

(R.S.MOHITE, J.) **(F.I. REBELLO, J)**